

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Implementation of Section 9)	MD Docket No. 96-186
of the Communications Act)	
)	
Assessment and Collection)	
of Regulatory Fees for)	
Fiscal year 1997)	

To: The Commission

**COMMENTS OF
CELLULAR XL ASSOCIATES, L.P.**

Cellular XL Associates, L.P. ("Cellular XL"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules,^{1/} and by its attorneys, hereby submits its comments on the Further Notice of Proposed Rulemaking ("FNPRM")^{2/} respecting the captioned proceeding. The following is respectfully shown:

Introduction

1. Cellular XL provides cellular service within the Mississippi 10 and 11 Rural Statistical Areas ("RSAs"), and remits regulatory fees to the FCC in connection with those operations. The information contained within Cellular XL's annual fee remittances is information which would be published in the Federal Register if the Commission adopts the proposal in the FNPRM to publish regulatory fee payment information. Thus, Cellular XL will be directly affected by the Commission's action on the proposal, and is an interested party to this proceeding.

^{1/} 47 C.F.R. §§ 1.415, 1.419.

^{2/} FCC 97-254, released July 18, 1997 (62 Fed. Reg. 40036, July 25, 1997).

Discussion

2. The Commission proposes to "publish annually in the Federal Register lists of those commercial communication firms and businesses that have paid a regulatory fee for the preceding fiscal year. [] The information published would include the amount of the fee paid and the volume or units upon which the fee payments were based."^{3/} As a cellular service provider, Cellular XL's regulatory fees are based upon the number of units in service as of a particular date (December 31 of the preceding year).

3. Cellular XL opposes the proposed publication of regulatory fee information. Certain of the information which the FCC proposes to publish (namely, the amount of the fee paid and the number of units upon which the fee was based) is proprietary, competitively sensitive information.

4. The number of units in service (which also may be derived from the total regulatory fee remitted) is proprietary information that carriers, including Cellular XL, typically do not disseminate. Publication of such information would render moot all efforts taken by carriers to maintain the confidentiality of the information. Publication also would be competitively damaging to existing licensees vis a vis new competitors who would be able to utilize information regarding the existing licensee's subscriber base to gain an unfair competitive advantage (created by regulatory mandate) during the roll-out or expansion of their own services. The competitive harm that would result from the proposed publication of regulatory fee

^{3/} FNPRM, para. 6.

information outweighs the perceived benefit of such reporting.^{4/} Therefore, the proposal should be rejected.

5. The Commission's proposal also would require a substantial investment of Commission and licensee resources in connection with the preparation, filing and consideration of requests for confidential treatment of information filed. In its FNPRM, the Commission acknowledges that certain of the proprietary information which the Commission proposes to publish may be entitled to confidential treatment, and indicates that parties should file individual requests for confidential treatment of information filed.^{5/} Cellular XL believes that most carriers treat as proprietary and confidential information pertaining to their number of units in service, and take active measures to prevent against its inadvertent disclosure. Consequently, the Commission is likely to be flooded by confidentiality requests should the FNPRM publication proposal be adopted. Cellular XL respectfully submits that it would produce an unnecessary drain on limited Commission and service provider resources to require licensees to file numerous confidentiality requests, each of which will require individual consideration and action by Commission staff.

Conclusion

6. In sum, Cellular XL opposes the proposed publication of proprietary, confidential subscriber information. Such disclosure would provide, by regulatory fiat, a competitive advantage to some competitors in the marketplace. In addition, the obligation to report such information in connection with publication will

^{4/} The Commission indicated that such reporting may assist the Commission in identifying errors in the recording of regulatory fees submitted. Id. However, in light of the detrimental affect of such publication, Cellular XL respectfully submits that responsibility for identifying clerical errors in the recording of fee submissions should remain with the Commission.

^{5/} Id.


cause the Commission to be inundated with confidentiality requests which will raise similar issues but will require individual reflection and action.

WHEREFORE, the foregoing premises having been duly considered, Cellular XL respectfully requests that the Commission reject the proposal contained in the FNPRM to publish information pertaining to the payment of regulatory fees.

Respectfully submitted,

CELLULAR XL ASSOCIATES, L.P.

By:



Carl W. Northrop
Christine M. Crowe

PAUL, HASTINGS, JANOFSKY
& WALKER LLP
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004-2400
(202) 508-9500

Its Attorneys

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